

## EXHIBIT R

### EPD ESCROW AGREEMENT

#### **Escrow Agreement**

This ESCROW AGREEMENT ("Escrow Agreement") is made and entered into as of December 19, 2007 by and among the VIRGINIA DEPARTMENT OF TRANSPORTATION (the "Department"), an agency of the Commonwealth of Virginia, CAPITAL BELTWAY EXPRESS LLC (the "Concessionaire"), a Delaware limited liability company, and SUNTRUST BANK, a Georgia banking corporation, as escrow agent hereunder (the "Escrow Agent") (the Department, the Concessionaire and the Escrow Agent are herein referred to collectively as the "Parties").

#### **RECITALS:**

WHEREAS, the Department and the Concessionaire have entered into an Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project, dated as of December 19, 2007 (the "ARCA"), pursuant to which the Department has granted to the Concessionaire a permit to (i) finance, develop, design and construct the Route 495 HOT Lanes in Virginia Project, and (ii) from and after the Service Commencement Date and until the end of the Term, to manage, operate, maintain, improve and equip the HOT Lanes and establish, impose, charge, collect, use and enforce payment of tolls (the "Project");

WHEREAS, pursuant to Section 18.05 of the ARCA, the Concessionaire is required to submit to the Department the Design Build Pricing Documents and the ARCA Pricing Documents (collectively, the "Escrow Pricing Documents");

WHEREAS, the Concessionaire and the Department desire to appoint the Escrow Agent to act as escrow agent hereunder in the manner hereinafter set forth, and the Escrow Agent is willing to act in such capacity; and

WHEREAS, it is a condition to the execution and delivery by the Department of the ARCA that this Escrow Agreement be entered into among the Parties.

NOW, THEREFORE, in consideration of these premises and in consideration of the mutual covenants herein contained, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, the Parties do hereby agree as follows:

1. Definitions. The following capitalized terms used in this Escrow Agreement shall have the meanings set forth below. All capitalized terms used in this Escrow Agreement, but not otherwise defined herein, shall have the respective meanings given to such terms in the ARCA.

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“*ARCA Pricing Documents*” one copy of all documentary information generated with respect to (i) the expected costs of the Project available to the Concessionaire under the Design-Build Contract, and (ii) the components of, and formulae for, the Financial Model and Base Case Financial Model, including without limitation the forecast revenue and expected non-financial costs of the Project during the Operating Period included in the Base Case Financial Model.

“*Design Build Pricing Documents*” means all documentary information generated with respect to the expected costs of the Project available to the Concessionaire under the Design Build Contract.

“*Escrow Pricing Documents*” means, collectively, the ARCA Pricing Documents and the Design Build Pricing Documents, and all data and contents thereof, as modified or supplemented from time to time.

2. Appointment of Escrow Agent. The Concessionaire and the Department hereby appoint SunTrust Bank to serve as escrow agent hereunder, and SunTrust Bank hereby accepts such appointment, subject to the terms and conditions set forth in this Escrow Agreement. The Escrow Agent shall hold, manage, provide access to and dispose of the Escrow Pricing Documents in accordance with the terms hereof.

3. Deposit of Escrow Pricing Documents. On or about the Agreement Date (and in any event no later than 30 days following such date), the Department (or, at the request of the Department, the Concessionaire) shall deliver and deposit with the Escrow Agent the Escrow Pricing Documents in the same sealed containers in which the Concessionaire delivered the Escrow Pricing Documents to the Department, which containers shall not have been opened or the contents thereof altered or modified in any way by the Department or any other person. The Escrow Agent shall provide written acknowledgment of the receipt of the Escrow Pricing Documents, and any subsequent additions or modifications to the Escrow Pricing Documents, promptly upon receipt thereof. The Escrow Agent is not required to take notice of the Escrow Pricing Documents or the contents thereof, which the Escrow Agent shall hold only for custodial purposes.

4. Ownership; Use and Review of Escrow Pricing Documents. The Parties hereby acknowledge and agree that the Escrow Pricing Documents are, and shall always be, the property of the Concessionaire. The Escrow Agent shall provide prompt access to the Escrow Pricing Documents upon receipt by it of a written notice requesting such access signed by the Department or the Concessionaire; provided that the Department, prior to making such request, has given a minimum of 24 hours notice to the Concessionaire, and the Concessionaire, prior to making such request, has given a minimum of 24 hours notice to the Department. The Escrow Agent shall not permit access to the Escrow Pricing Documents to any person other than duly authorized representatives of the Department and the Concessionaire. Such authorized representatives of the Concessionaire and the Department shall be entitled to conduct examinations and reviews of the Escrow Pricing Documents for the purposes and in accordance with the provisions set forth in Section 18.05 of the ARCA.

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#### 5. Release and Return of Escrow Pricing Documents.

(a) The Escrow Agent shall hold the Escrow Pricing Documents in its possession at its offices in Richmond, Virginia until directed to deliver such Escrow Pricing Documents upon receipt of a written certification delivered pursuant to paragraph 5(b) or 5(c) below or a final adjudication, as applicable, whereupon the Escrow Agent shall deliver the appropriate Escrow Pricing Documents to the Concessionaire.

(b) The Escrow Agent shall release the Design Build Pricing Documents to the Concessionaire upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the Project has achieved Final Acceptance, final payment has been made to the Design Build Contractor, and all claims or disputes arising under or related to the Design-Build Contract have been fully and finally resolved and/or adjudicated.

(c) The Escrow Agent shall release the ARCA Pricing Documents to the Concessionaire upon receipt by the Escrow Agent of a certification from the Concessionaire and the Department stating that the ARCA has terminated in accordance with the provisions thereof and all claims or disputes arising under or related to the ARCA have been fully and finally resolved and/or adjudicated.

6. Termination. This Escrow Agreement shall continue in effect and shall automatically terminate at such time as all Escrow Pricing Documents are released to the Concessionaire as provided in paragraph 6 hereof. It is agreed and understood that in the event of disagreement between the Parties hereto, the Escrow Agent will, and does, reserve the right to hold the Escrow Pricing Documents in its possession, and all papers in connection with or concerning this escrow, until mutual agreement has been reached between the Parties or until delivery thereof is ordered pursuant to a final disposition reached pursuant to the dispute resolution provisions of Section 17.06 of the ARCA.

#### 7. Liability of Escrow Agent.

The Escrow Agent shall have no responsibility to any person in connection with this Escrow Agreement, except as specifically provided, and shall not be responsible for anything done or omitted to be done by it except for its own gross negligence or willful default in the performance of any obligation imposed on it hereunder. Unless specifically provided herein, the Escrow Agent has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the other Parties with respect to arrangements or contracts with others, the Escrow Agent's sole duty hereunder being to safeguard the Escrow Pricing Documents and to dispose of and deliver the same in accordance with this Escrow Agreement. If the Escrow Agent is called upon by the terms of this Escrow Agreement to determine the occurrence of any event or contingency, the Escrow Agent may request from the other Parties or any other person such reasonable additional evidence as the Escrow Agent in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may inquire and consult with the other Parties, among others, at any time. The Escrow Agent may request an opinion of counsel

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for a determination of any legal issue which might arise in the performance of its duties hereunder and such opinion of counsel shall be full and complete authorization for any action taken, suffered or omitted by the Escrow Agent in reliance thereon. This Escrow Agreement sets forth exclusively the duties of the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties or obligations shall be read into this Escrow Agreement against the Escrow Agent.

#### 8. Payment of Escrow Agent.

The Escrow Agent acknowledges receipt of good and valuable consideration for the services rendered or to be rendered by it pursuant to this Escrow Agreement. The Concessionaire shall pay the Escrow Agent's reasonable fees and expenses in connection with the performance of its duties under this Escrow Agreement. The annual administrative fee is \$1,500.00 and shall be payable by the Concessionaire within 30 days of receipt of an invoice from the Escrow Agent.

#### 9. Resignation and Replacement of Escrow Agent.

The Escrow Agent may resign, and thereby become discharged from the trusts, duties and obligations hereby created, by notice given to the Department and the Concessionaire, not less than 15 days before such resignation shall take effect. Such resignation shall take effect immediately, however, upon the earlier appointment of a new Escrow Agent hereunder and acceptance of the trusts hereby created. The Escrow Agent shall continue to serve as Escrow Agent until a successor is appointed and the Escrow Pricing Documents have been properly transferred to the successor Escrow Agent. In the event of the resignation of the Escrow Agent prior to the expiration of this Escrow Agreement, the Escrow Agent shall rebate to the Concessionaire a ratable portion of any prepaid fee theretofore paid by the Concessionaire to the Escrow Agent for its services hereunder. After any notice of resignation of the Escrow Agent, the Concessionaire shall undertake to appoint a replacement Escrow Agent on terms reasonably acceptable to the Concessionaire and the Department.

#### 10. Benefit of Agreement; Amendments.

(a) This Escrow Agreement is made for the benefit of the Concessionaire and the Department, except as otherwise expressly provided herein.

(b) This Escrow Agreement shall not be amended without the written consent of the Concessionaire, the Department and the Escrow Agent.

#### 11. Notices.

Unless otherwise provided herein, all demands, notices, approvals and other communications hereunder shall be in writing and shall not be effective for any purpose unless and until actually received by the addressee or unless served (a) personally, (b) by independent, reputable, overnight commercial courier, (c) by facsimile transmission, where the transmitting party includes a cover sheet identifying the name, location and

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identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page), where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device, and where the facsimile transmission is immediately followed by service of the original of the subject item in another manner permitted herein, or (d) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to the Department:

Virginia Department of Transportation  
1401 E. Broad Street  
Richmond, VA 23219  
Attention: Chief Engineer  
Facsimile: (804) 786-2940

*With copies to:*

Office of the Attorney General  
900 E. Main Street  
Richmond, VA 23219  
Attention: Chief Transportation Section  
Facsimile: (804) 786-9136

If to the Concessionaire:

The President  
Capital Beltway Express LLC  
565 5th Avenue, 18th Floor  
New York, NY, 10017  
Phone: 646-278-0870  
Facsimile: 646-278-0839

*With a copy to:*

The Vice-President Development  
Capital Beltway Express LLC  
1421 Prince Street, Suite 200  
Alexandria, VA, 22331  
Phone: 571-527-2050  
Facsimile: 571-527-2060

If to the Escrow Agent:

SunTrust Bank  
919 East Main Street, Floor 7

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Richmond, Virginia 23219  
Attention: Corporate Agency Services  
Telephone: 804-782-5400  
Facsimile: 804-782-7855

The above parties may by notice given hereunder designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention the same shall be directed.

#### 12. Successors and Assigns.

This Escrow Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns. The Department and the Escrow Agent hereby consent to the collateral assignment (the "Assignment") of this Escrow Agreement in whole by the Concessionaire to the Financing Entities (as defined below) as security for the performance of the Concessionaire's obligations to the Financing Entities. Pursuant to the Assignment, the Financing Entities and their designee or assignee shall have the right to assume the benefits and obligations of the Concessionaire under this Escrow Agreement. In the event that the Financing Entities or such designee or assignee exercise such right by notice to the Escrow Agent, as of the date of such assumption of benefits and obligations of the Concessionaire hereunder, the term "Beneficiary" as used in this Escrow Agreement shall be deemed to mean the Financing Entities or such designee or assignee as assignee of the Concessionaire, and as such assignee the Financing Entities or such designee or assignee shall have all rights accorded to the Concessionaire in this Escrow Agreement. Any Financing Entity may, in connection with any default under any financing document relating to the Project to which the Concessionaire is a party, assign any rights assigned to it hereunder to any other entity. For purposes of this Escrow Agreement, the "Financing Entities" shall mean those banks, governmental entities, financial institutions, underwriters, or other entities, including their successors and assigns and any trustee or agent acting on their behalf, that will provide, directly or indirectly, financing to the Concessionaire in connection with its obligations under the ARCA. However, the Escrow Agent shall have no obligation in performing this Escrow Agreement to recognize any successor or assign of the Concessionaire unless the Escrow Agent receives clear, authoritative and conclusive written evidence of the change of Party.

#### 13. Counterparts.

This Escrow Agreement may be executed in several counterparts each of which shall be an original and all of which together shall constitute but one and the same instrument.

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14. Governing Law.

This Escrow Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

15. Waiver.

Any term of this Escrow Agreement may be waived by the Party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the Party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Escrow Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

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IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be executed by their duly authorized representatives as of the date first written above.

	<p>VIRGINIA DEPARTMENT OF TRANSPORTATION, a department of the Commonwealth of Virginia</p> <p>By: _____ _____ Commonwealth Transportation Commissioner</p>
	<p>CAPITAL BELTWAY EXPRESS LLC, a Delaware limited liability company</p> <p>By: _____ Name: _____ Title: _____</p>
	<p>SUNTRUST BANK, a Georgia banking corporation, as Escrow Agent</p> <p>By: _____ Name: _____ Title: _____</p>